

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Tim Corey,

Plaintiff,

v.

Michael Labbshire; Rob Peele; J. Franklin;

Ms Young; Ms Bell; Ms Moss; Marcia

Fuller,

Defendants.

C.A. No. 5:11-1078-TMC

ORDER

This matter is before the court on the Magistrate Judge's Report and Recommendation (Dkt. # 56). The Plaintiff, proceeding *pro se* and *in forma pauperis*, filed this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. The Magistrate Judge's Report and Recommendation, filed on February 24, 2012, recommends that this action be dismissed with prejudice for failure to prosecute. (Dkt. # 56). The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge's recommendation herein without a recitation.

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the

Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

The Defendants filed a Motion for Summary Judgment on December 21, 2011. (Dkt. # 42). The record reveals that, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), by order dated December 22, 2011, the Plaintiff was advised of the importance of a Motion for Summary Judgment and of the need for him to file an adequate response. (Dkt. # 43). Plaintiff was specifically advised that if he failed to respond adequately, the Defendants' Motion might be granted, thereby ending this case. As Plaintiff is proceeding *pro se*, the court ordered Plaintiff to advise whether he wished to continue with the case by February 21, 2012. (Dkt. # 52). Plaintiff has filed no response. The Magistrate Judge then filed a Report and Recommendation recommending that this action be dismissed for failure to prosecute. Plaintiff was advised of his right to file objections to the Report and Recommendation (Dkt. # 56-1). However, Plaintiff

filed no objections to the Report and Recommendation. Based on the foregoing, it appears the Plaintiff no longer wishes to pursue this action.

Accordingly, this action is **DISMISSED** with prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982).

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Greenville, South Carolina
March 16, 2012

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.